

Executive Summary – Enforcement Matter – Case No. 50582
Austin Presidio Residential, LLC
RN106873615
Docket No. 2015-0798-EAQ-E

Order Type:

1660 Agreed Order

Findings Order Justification:

N/A

Media:

EAQ

Small Business:

Yes

Location(s) Where Violation(s) Occurred:

Presidio Multifamily Phase I, 13535 Lyndhurst Street, Austin, Williamson County

Type of Operation:

Multifamily residential construction site

Other Significant Matters:

Additional Pending Enforcement Actions: No

Past-Due Penalties: No

Other: N/A

Interested Third-Parties: None

Texas Register Publication Date: October 9, 2015

Comments Received: No

Penalty Information

Total Penalty Assessed: \$18,750

Amount Deferred for Expedited Settlement: \$3,750

Amount Deferred for Financial Inability to Pay: \$0

Total Paid to General Revenue: \$15,000

Total Due to General Revenue: \$0

Payment Plan: N/A

Supplemental Environmental Project ("SEP") Conditional Offset: \$0

Name of SEP: N/A

Compliance History Classifications:

Person/CN - N/A

Site/RN - Unclassified

Major Source: Yes

Statutory Limit Adjustment: N/A

Applicable Penalty Policy: April 2014

Investigation Information

Complaint Date(s): N/A

Complaint Information: N/A

Date(s) of Investigation: April 13, 2015

Date(s) of NOE(s): April 29, 2015

Executive Summary – Enforcement Matter – Case No. 50582
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Violation Information

Failed to obtain approval of an Edwards Aquifer Protection Plan (“EAPP”) prior to commencing any regulated activities over the Edwards Aquifer Recharge Zone. Specifically, approximately 14.1 acres of land has been cleared and graded without approval [30 TEX. ADMIN. CODE § 213.4(a)(1)].

Corrective Actions/Technical Requirements

Corrective Action(s) Completed:

On May 4, 2015, the Respondent submitted an EAPP under No. 11-15050402 to the TCEQ Austin Regional Office.

Technical Requirements:

The Order will require the Respondent to:

- a. Respond completely and adequately to all requests for additional information within 30 days of such request, or by any other deadline specified in writing, concerning the EAPP submitted on May 4, 2015.
- b. Within 120 days, submit written certification that approval has been obtained under EAPP No. 11-15050402; and
- c. Within 135 days, submit written certification to demonstrate compliance with b.

Litigation Information

Date Petition(s) Filed: N/A
Date Answer(s) Filed: N/A
SOAH Referral Date: N/A
Hearing Date(s): N/A
Settlement Date: N/A

Contact Information

TCEQ Attorney: N/A
TCEQ Enforcement Coordinator: Cheryl Thompson, Enforcement Division, Enforcement Team 3, MC R-04, (817) 588-5886; Candy Garrett, Enforcement Division, MC 219, (512) 239-1456
TCEQ SEP Coordinator: N/A
Respondent: Thomas B. Bakewell, Organizer, Austin Presidio Residential, LLC, 1601 Elm Street, Suite 4900, Dallas, Texas 75201
Respondent's Attorney: N/A



Penalty Calculation Worksheet (PCW)

Policy Revision 4 (April 2014)

PCW Revision March 26, 2014

TCEQ

DATES	Assigned	4-May-2015	Screening	12-May-2015	EPA Due	
	PCW	21-May-2015				

RESPONDENT/FACILITY INFORMATION

Respondent	Austin Presidio Residential, LLC		
Reg. Ent. Ref. No.	RN106873615		
Facility/Site Region	11-Austin	Major/Minor Source	Major

CASE INFORMATION

Enf./Case ID No.	50582	No. of Violations	1
Docket No.	2015-0798-EAQ-E	Order Type	1660
Media Program(s)	Water Quality	Government/Non-Profit	No
Multi-Media		Enf. Coordinator	Cheryl Thompson
		EC's Team	Enforcement Team 3
Admin. Penalty \$ Limit Minimum	\$0	Maximum	\$25,000

Penalty Calculation Section

TOTAL BASE PENALTY (Sum of violation base penalties)	Subtotal 1	\$18,750
ADJUSTMENTS (+/-) TO SUBTOTAL 1		
Subtotals 2-7 are obtained by multiplying the Total Base Penalty (Subtotal 1) by the indicated percentage.		
Compliance History	0.0% Enhancement	Subtotals 2, 3, & 7 \$0
Notes	No adjustment for compliance history.	
Culpability	No 0.0% Enhancement	Subtotal 4 \$0
Notes	The Respondent does not meet the culpability criteria.	
Good Faith Effort to Comply Total Adjustments	Subtotal 5	\$0
Economic Benefit	0.0% Enhancement*	Subtotal 6 \$0
Total EB Amounts	\$33	
Estimated Cost of Compliance	\$11,500	
	*Capped at the Total EB \$ Amount	
SUM OF SUBTOTALS 1-7	Final Subtotal	\$18,750
OTHER FACTORS AS JUSTICE MAY REQUIRE	0.0%	Adjustment \$0
Reduces or enhances the Final Subtotal by the indicated percentage.		
Notes		
	Final Penalty Amount	\$18,750
STATUTORY LIMIT ADJUSTMENT	Final Assessed Penalty	\$18,750
DEFERRAL	20.0% Reduction	Adjustment -\$3,750
Reduces the Final Assessed Penalty by the indicated percentage. (Enter number only; e.g. 20 for 20% reduction.)		
Notes	Deferral offered for expedited settlement.	
PAYABLE PENALTY		\$15,000

Screening Date 12-May-2015

Docket No. 2015-0798-EAQ-E

PCW

Respondent Austin Presidio Residential, LLC

Policy Revision 4 (April 2014)

Case ID No. 50582

PCW Revision March 26, 2014

Reg. Ent. Reference No. RN106873615

Media [Statute] Water Quality

Enf. Coordinator Cheryl Thompson

Compliance History Worksheet

>> Compliance History Site Enhancement (Subtotal 2)

Component	Number of...	Enter Number Here	Adjust.
NOVs	Written notices of violation ("NOVs") with same or similar violations as those in the current enforcement action (<i>number of NOVs meeting criteria</i>)	0	0%
	Other written NOVs	0	0%
Orders	Any agreed final enforcement orders containing a denial of liability (<i>number of orders meeting criteria</i>)	0	0%
	Any adjudicated final enforcement orders, agreed final enforcement orders without a denial of liability, or default orders of this state or the federal government, or any final prohibitory emergency orders issued by the commission	0	0%
Judgments and Consent Decrees	Any non-adjudicated final court judgments or consent decrees containing a denial of liability of this state or the federal government (<i>number of judgments or consent decrees meeting criteria</i>)	0	0%
	Any adjudicated final court judgments and default judgments, or non-adjudicated final court judgments or consent decrees without a denial of liability, of this state or the federal government	0	0%
Convictions	Any criminal convictions of this state or the federal government (<i>number of counts</i>)	0	0%
Emissions	Chronic excessive emissions events (<i>number of events</i>)	0	0%
Audits	Letters notifying the executive director of an intended audit conducted under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 (<i>number of audits for which notices were submitted</i>)	0	0%
	Disclosures of violations under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 (<i>number of audits for which violations were disclosed</i>)	0	0%
Please Enter Yes or No			
Other	Environmental management systems in place for one year or more	No	0%
	Voluntary on-site compliance assessments conducted by the executive director under a special assistance program	No	0%
	Participation in a voluntary pollution reduction program	No	0%
	Early compliance with, or offer of a product that meets future state or federal government environmental requirements	No	0%

Adjustment Percentage (Subtotal 2) 0%

>> Repeat Violator (Subtotal 3)

No

Adjustment Percentage (Subtotal 3) 0%

>> Compliance History Person Classification (Subtotal 7)

N/A

Adjustment Percentage (Subtotal 7) 0%

>> Compliance History Summary

Compliance
History
Notes

No adjustment for compliance history.

Total Compliance History Adjustment Percentage (Subtotals 2, 3, & 7) 0%

>> Final Compliance History Adjustment

Final Adjustment Percentage *capped at 100% 0%

Screening Date 12-May-2015

Docket No. 2015-0798-EAQ-E

PCW

Respondent Austin Presidio Residential, LLC

Policy Revision 4 (April 2014)

Case ID No. 50582

PCW Revision March 26, 2014

Reg. Ent. Reference No. RN106873615

Media [Statute] Water Quality

Enf. Coordinator Cheryl Thompson

Violation Number 1

Rule Cite(s) 30 Tex. Admin. Code § 213.4(a)(1)

Violation Description

Failed to obtain approval of an Edwards Aquifer Protection Plan ("EAPP") prior to commencing any regulated activities over the Edwards Aquifer Recharge Zone, as documented during a record review conducted on April 13, 2015. Specifically, approximately 14.1 acres of land has been cleared and graded without approval.

Base Penalty \$25,000

>> Environmental, Property and Human Health Matrix

OR

Release	Harm		
	Major	Moderate	Minor
Actual			
Potential			

Percent 0.0%

>> Programmatic Matrix

Falsification	Major	Moderate	Minor
	x		

Percent 15.0%

Matrix Notes

100% of the rule requirement was not met.

Adjustment \$21,250

\$3,750

Violation Events

Number of Violation Events 5

29 Number of violation days

mark only one with an x	daily	
	weekly	x
	monthly	
	quarterly	
	semiannual	
	annual	
	single event	

Violation Base Penalty \$18,750

Five weekly events are recommended from April 13, 2015 (record review date) to May 12, 2015 (screening date).

Good Faith Efforts to Comply

0.0%

Reduction \$0

	Before NOE/NOV	NOE/NOV to EDPRP/Settlement Offer
Extraordinary		
Ordinary		
N/A	x	(mark with x)

Notes

The Respondent does not meet the good faith criteria for this violation.

Violation Subtotal \$18,750

Economic Benefit (EB) for this violation

Statutory Limit Test

Estimated EB Amount \$33

Violation Final Penalty Total \$18,750

This violation Final Assessed Penalty (adjusted for limits) \$18,750

Economic Benefit Worksheet

Respondent Austin Presidio Residential, LLC
 Case ID No. 50582
 Reg. Ent. Reference No. RN106873615
 Media Water Quality
 Violation No. 1

Percent Interest	Years of Depreciation
5.0	15

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
No commas or \$							

Delayed Costs

Equipment				0.00	\$0	\$0	\$0
Buildings				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0
Engineering/Construction				0.00	\$0	\$0	\$0
Land				0.00	\$0	n/a	\$0
Record Keeping System				0.00	\$0	n/a	\$0
Training/Sampling				0.00	\$0	n/a	\$0
Remediation/Disposal				0.00	\$0	n/a	\$0
Permit Costs	\$6,500	13-Apr-2015	4-May-2015	0.06	\$19	n/a	\$19
Other (as needed)	\$5,000	13-Apr-2015	4-May-2015	0.06	\$14	n/a	\$14

Notes for DELAYED costs

Actual cost for the application fee. Other cost is the estimated cost to prepare and submit an EAPP application and to obtain approval for Presidio Multifamily Phase I. Dates required are the record review date. Final dates are the date the EAPP application was submitted.

Avoided Costs

ANNUALIZE [1] avoided costs before entering item (except for one-time avoided costs)

Disposal				0.00	\$0	\$0	\$0
Personnel				0.00	\$0	\$0	\$0
Inspection/Reporting/Sampling				0.00	\$0	\$0	\$0
Supplies/Equipment				0.00	\$0	\$0	\$0
Financial Assurance [2]				0.00	\$0	\$0	\$0
ONE-TIME avoided costs [3]				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0

Notes for AVOIDED costs

Approx. Cost of Compliance

\$11,500

TOTAL

\$33

The TCEQ is committed to accessibility.

To request a more accessible version of this report, please contact the TCEQ Help Desk at (512) 239-4357.



Compliance History Report

PUBLISHED Compliance History Report for CN604772061, RN106873615, Rating Year 2014 which includes Compliance History (CH) components from September 1, 2009, through August 31, 2014.

Customer, Respondent, or Owner/Operator: CN604772061, Austin Presidio Residential, LLC **Classification:** NOT APPLICABLE **Rating:** N/A

Regulated Entity: RN106873615, Presidio Multifamily Phase I **Classification:** UNCLASSIFIED **Rating:** -----

Complexity Points: 4 **Repeat Violator:** NO

CH Group: 09 - Construction

Location: 13535 LYNDHURST STREET IN AUSTIN, WILLIAMSON COUNTY, TEXAS

TCEQ Region: REGION 11 - AUSTIN

ID Number(s):

EDWARDS AQUIFER PERMIT 11-14031001

EDWARDS AQUIFER PERMIT 11-15031104

EDWARDS AQUIFER PERMIT 11-15050402

EDWARDS AQUIFER PERMIT 11-13073101

STORMWATER PERMIT TXR150016508

Compliance History Period: September 01, 2009 to August 31, 2014 **Rating Year:** 2014 **Rating Date:** 09/01/2014

Date Compliance History Report Prepared: May 12, 2015

Agency Decision Requiring Compliance History: Enforcement

Component Period Selected: May 12, 2010 to May 12, 2015

TCEQ Staff Member to Contact for Additional Information Regarding This Compliance History.

Name: Cheryl Thompson

Phone: (817) 588-5886

Site and Owner/Operator History:

- 1) Has the site been in existence and/or operation for the full five year compliance period? NO
- 2) Has there been a (known) change in ownership/operator of the site during the compliance period? NO
- 3) If **YES** for #2, who is the current owner/operator? N/A
- 4) If **YES** for #2, who was/were the prior owner(s)/operator(s)? N/A
- 5) If **YES**, when did the change(s) in owner or operator occur? N/A

Components (Multimedia) for the Site Are Listed in Sections A - J

A. Final Orders, court judgments, and consent decrees:

N/A

B. Criminal convictions:

N/A

C. Chronic excessive emissions events:

N/A

D. The approval dates of investigations (CCEDS Inv. Track. No.):

N/A

E. Written notices of violations (NOV) (CCEDS Inv. Track. No.):

N/A

F. Environmental audits:

N/A

G. Type of environmental management systems (EMSs):

N/A

H. Voluntary on-site compliance assessment dates:

N/A

I. Participation in a voluntary pollution reduction program:

N/A

J. Early compliance:

N/A

Sites Outside of Texas:

N/A

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



**IN THE MATTER OF AN
ENFORCEMENT ACTION
CONCERNING
AUSTIN PRESIDIO
RESIDENTIAL, LLC
RN106873615**

**§ BEFORE THE
§
§ TEXAS COMMISSION ON
§
§
§ ENVIRONMENTAL QUALITY**

AGREED ORDER DOCKET NO. 2015-0798-EAQ-E

I. JURISDICTION AND STIPULATIONS

On _____, the Texas Commission on Environmental Quality ("the Commission" or "TCEQ") considered this agreement of the parties, resolving an enforcement action regarding Austin Presidio Residential, LLC ("Respondent") under the authority of TEX. WATER CODE chs. 7 and 26. The Executive Director of the TCEQ, through the Enforcement Division, and the Respondent together stipulate that:

1. The Respondent owns and operates a multifamily residential construction site located at 13535 Lyndhurst Street in Austin, Williamson County, Texas (the "Site").
2. The Site adjoins, is contiguous with, surrounds, or is near or adjacent to water in the state as defined in TEX. WATER CODE § 26.001(5).
3. The Executive Director and the Respondent agree that the Commission has jurisdiction to enter this Agreed Order, and that the Respondent is subject to the Commission's jurisdiction.
4. The Respondent received notice of the violations alleged in Section II ("Allegations") on or about May 4, 2015.
5. The occurrence of any violation is in dispute and the entry of this Agreed Order shall not constitute an admission by the Respondent of any violation alleged in Section II ("Allegations"), nor of any statute or rule.

6. An administrative penalty in the amount of Eighteen Thousand Seven Hundred Fifty Dollars (\$18,750) is assessed by the Commission in settlement of the violations alleged in Section II ("Allegations"). The Respondent has paid Fifteen Thousand Dollars (\$15,000) of the administrative penalty and Three Thousand Seven Hundred Fifty Dollars (\$3,750) is deferred contingent upon the Respondent's timely and satisfactory compliance with all the terms of this Agreed Order. The deferred amount will be waived upon full compliance with the terms of this Agreed Order. If the Respondent fails to timely and satisfactorily comply with all requirements of this Agreed Order, the Executive Director may require the Respondent to pay all or part of the deferred penalty.
7. Any notice and procedures, which might otherwise be authorized or required in this action, are waived in the interest of a more timely resolution of the matter.
8. The Executive Director and the Respondent agree on a settlement of the matters alleged in this enforcement action, subject to final approval in accordance with 30 TEX. ADMIN. CODE § 70.10(a).
9. The Executive Director recognizes that on May 4, 2015, the Respondent submitted an Edwards Aquifer Protection Plan ("EAPP") under No. 11-15050402 to the TCEQ Austin Regional Office.
10. The Executive Director may, without further notice or hearing, refer this matter to the Office of the Attorney General of the State of Texas ("OAG") for further enforcement proceedings if the Executive Director determines that the Respondent has not complied with one or more of the terms or conditions in this Agreed Order.
11. This Agreed Order shall terminate five years from its effective date or upon compliance with all the terms and conditions set forth in this Agreed Order, whichever is later.
12. The provisions of this Agreed Order are deemed severable and, if a court of competent jurisdiction or other appropriate authority deems any provision of this Agreed Order unenforceable, the remaining provisions shall be valid and enforceable.

II. ALLEGATIONS

As owner and operator of the Site, the Respondent is alleged to have failed to obtain approval of an EAPP prior to commencing any regulated activities over the Edwards Aquifer Recharge Zone, in violation of 30 TEX. ADMIN. CODE § 213.4(a)(1), as documented during a record review conducted on April 13, 2015. Specifically, approximately 14.1 acres of land has been cleared and graded without approval.

III. DENIALS

The Respondent generally denies each allegation in Section II ("Allegations").

IV. ORDERING PROVISIONS

1. It is, therefore, ordered by the TCEQ that the Respondent pay an administrative penalty as set forth in Section I, Paragraph 6 above. The payment of this administrative penalty and the Respondent's compliance with all the terms and conditions set forth in this Agreed Order resolve only the allegations in Section II. The Commission shall not be constrained in any manner from requiring corrective action or penalties for violations which are not raised here. Administrative penalty payments shall be made payable to "TCEQ" and shall be sent with the notation "Re: Austin Presidio Residential, LLC, Docket No. 2015-0798-EAQ-E" to:

Financial Administration Division, Revenue Operations Section
Attention: Cashier's Office, MC 214
Texas Commission on Environmental Quality
P.O. Box 13088
Austin, Texas 78711-3088

2. It is further ordered that the Respondent shall undertake the following technical requirements:
 - a. Respond completely and adequately to all requests for additional information within 30 days of such request, or by any other deadline specified in writing, concerning the EAPP submitted on May 4, 2015.
 - b. Within 120 days after the effective date of this Agreed Order, submit written certification that approval has been obtained under EAPP No. 11-15050402, as described in Ordering Provision No. 2.c. below.
 - c. Within 135 days after the effective date of this Agreed Order, submit written certification as described below, and include detailed supporting documentation including photographs, receipts, and/or other records to demonstrate compliance with Ordering Provision No. 2.b. The certification shall be notarized by a State of Texas Notary Public and include the following certification language:

"I certify under penalty of law that I have personally examined and am familiar with the information submitted and all attached documents, and that based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the submitted information is true, accurate and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fines and imprisonment for knowing violations."

The certification shall be submitted to:

Order Compliance Team
Enforcement Division, MC 149A
Texas Commission on Environmental Quality
P.O. Box 13087
Austin, Texas 78711-3087

with a copy to:

Water Section Manager
Austin Regional Office
Texas Commission on Environmental Quality
P.O. Box 13087
Austin, Texas 78711-3087

3. The provisions of this Agreed Order shall apply to and be binding upon the Respondent. The Respondent is ordered to give notice of the Agreed Order to personnel who maintain day-to-day control over the Site operations referenced in this Agreed Order.
4. If the Respondent fails to comply with any of the Ordering Provisions in this Agreed Order within the prescribed schedules, and that failure is caused solely by an act of God, war, strike, riot, or other catastrophe, the Respondent's failure to comply is not a violation of this Agreed Order. The Respondent shall have the burden of establishing to the Executive Director's satisfaction that such an event has occurred. The Respondent shall notify the Executive Director within seven days after the Respondent becomes aware of a delaying event and shall take all reasonable measures to mitigate and minimize any delay.
5. The Executive Director may grant an extension of any deadline in this Agreed Order or in any plan, report, or other document submitted pursuant to this Agreed Order, upon a written and substantiated showing of good cause. All requests for extensions by the Respondent shall be made in writing to the Executive Director. Extensions are not effective until the Respondent receives written approval from the Executive Director. The determination of what constitutes good cause rests solely with the Executive Director.
6. This Agreed Order, issued by the Commission, shall not be admissible against the Respondent in a civil proceeding, unless the proceeding is brought by the OAG to: (1) enforce the terms of this Agreed Order; or (2) pursue violations of a statute within the Commission's jurisdiction, or of a rule adopted or an order or permit issued by the Commission under such a statute.
7. This Agreed Order may be executed in separate and multiple counterparts, which together shall constitute a single instrument. Any page of this Agreed Order may be copied, scanned, digitized, converted to electronic portable document format ("pdf"), or otherwise reproduced and may be transmitted by digital or electronic transmission, including but not limited to facsimile transmission and electronic mail. Any signature affixed to this Agreed Order shall constitute an original signature for all purposes and

may be used, filed, substituted, or issued for any purpose for which an original signature could be used. The term "signature" shall include manual signatures and true and accurate reproductions of manual signatures created, executed, endorsed, adopted, or authorized by the person or persons to whom the signatures are attributable. Signatures may be copied or reproduced digitally, electronically, by photocopying, engraving, imprinting, lithographing, electronic mail, facsimile transmission, stamping, or any other means or process which the Executive Director deems acceptable. In this paragraph exclusively, the terms "electronic transmission", "owner", "person", "writing", and "written" shall have the meanings assigned to them under TEX. BUS. ORG. CODE § 1.002.

8. Under 30 TEX. ADMIN. CODE § 70.10(b), the effective date is the date of hand-delivery of the Order to the Respondent, or three days after the date on which the Commission mails notice of the Order to the Respondent, whichever is earlier.

SIGNATURE PAGE

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

For the Commission

Pamela Maria J
For the Executive Director

11/19/15
Date

I, the undersigned, have read and understand the attached Agreed Order. I am authorized to agree to the attached Agreed Order on behalf of the entity indicated below my signature, and I do agree to the terms and conditions specified therein. I further acknowledge that the TCEQ, in accepting payment for the penalty amount, is materially relying on such representation.

I also understand that failure to comply with the Ordering Provisions, if any, in this order and/or failure to timely pay the penalty amount, may result in:

- A negative impact on compliance history;
- Greater scrutiny of any permit applications submitted;
- Referral of this case to the Attorney General's Office for contempt, injunctive relief, additional penalties, and/or attorney fees, or to a collection agency;
- Increased penalties in any future enforcement actions;
- Automatic referral to the Attorney General's Office of any future enforcement actions; and
- TCEQ seeking other relief as authorized by law.

In addition, any falsification of any compliance documents may result in criminal prosecution.

Thomas B. Bakewell
Signature

9-1-15
Date

Thomas B. Bakewell
Name (Printed or typed)
Authorized Representative of
Austin Presidio Residential, LLC

Organizer
Title

Instructions: Send the original, signed Agreed Order with penalty payment to the Financial Administration Division, Revenue Operations Section at the address in Section IV, Paragraph 1 of this Agreed Order.